IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL NO.1014 OF 2005

IN

NOTICE OF MOTION NO.2859 OF 2005

IN

B.C.C.C. LONG CAUSE SUIT NO.3105 OF 2005

ALONG WITH

CIVIL APPLICATION NO.1159 OF 2005

Kamladevi Jagdish Diwan ...Appellant

Versus

Bombay Isle Developers Pvt.Ltd.

& Anr. ...Respondents

.....

Mr.S.I.Memon for Appellant.

Mr.M.P.Rao with Mr.Naushad Engineer & Mr.Hemang Rajthattha i/b M/s.RMG Law Associates for Respondent No.1.

Mr.V.B.Sakhare with Mr.Malandkar, A.G.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 23, 2006.

P.C.

1. Heard Counsel for the parties.

2. Essentially two fold dispute is raised before this Court. The first controversy is that three tenants were occupying separate premises in the disputed plot. Out of them, Appellant has entered into agreement with two tenants, whereunder the Appellant will be obliged to provide them alternate accommodation. Insofar as those two tenants are concerned, the Respondent No.1 has already made provision in the original plan to accommodate two tenants and the third tenant, by subsequently amending the plan. So far as those two tenants are concerned, in my opinion, no controversy would survive.

3. Counsel for the Appellant, however, submits that the plans which are submitted are not in conformity with the agreement between the parties to provide specific area of alternate premises. In my view, however, that issue will have to be contested in the proceedings before the Trial Court. In case, the Appellant succeeds in establishing that point, the Trial Court will have

to pass appropriate orders to adjust equities between the parties. Insofar as the third tenant is concerned, according to the Respondent No.1, even the third tenant has been accommodated by carrying out necessary amendments to the plans, which plans are awaiting approval. Agreements have been entered into between the third tenant for providing alternate accommodation. As the Appellant is in no way concerned with the interest of the third tenant, he cannot be permitted to take up the cause of the third tenant, for, that matter will be between the Respondent No.1 and the third tenant interse.

4. Be that as it may, as Respondent No.1 has assured to provide three separate accommodations as per the agreement with three tenants, no fault can be found with the Court below in not acceding to the request for ad-interim relief in its entirety, on the basis of undertaking given by the Respondent No.1.

5. The second grievance of the Appellant is about two garages on the disputed plot. Insofar as

the two garages are concerned, the Court below has already directed the parties to maintain status-quo with regard to the said structures in terms of the order dated 6th August 2005. Respondent No.1, through Counsel, undertakes to abide by that direction till the Notice of Motion is finally disposed of, which in turn, will consider the claim about the two garages involved in the subject proceedings.

6. Viewed in this perspective, as no other grievance is made before this Court, the Appeal will have to be disposed of on once again accepting the assurance given by the Respondent No.1 through Counsel in the above terms.

7. Trial Court will be well advised to dispose of the Notice of Motion as expeditiously as possible, preferably within six months from today. Counsel for the parties assure that they shall not seek adjournment before the lower Court and instead, will proceed with the hearing of the Notice of Motion on the next date of hearing.

8. Trial Court shall proceed to decide the Notice of Motion on its own merits in accordance with law, uninfluenced by any of the observations made in this order.

9. In view of the above order, Civil Application also stands disposed of.

A.M.KHANWILKAR, J.